

Although respondent and its insurance carrier did not file a letter or brief with the Board, at the preliminary hearing they argued that claimant had departed from his employment and, therefore, the accident was not compensable.

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

Claimant worked for respondent as a trim carpenter. Claimant worked on new construction and oftentimes there were no restroom facilities on the job site. Accordingly, respondent permitted its employees to leave the job sites as needed to use the restroom or obtain drinks. When respondent's owner was not present, the workers could leave the job site as needed without first obtaining permission.

On June 25, 2002, after respondent's owner had left the job site, claimant and a coworker also left to obtain drinks and use the restroom. Rather than stopping at the nearest convenience store where respondent had previously permitted them to go to buy drinks and use the restroom facilities, they drove several miles farther to claimant's girlfriend's residence.

When returning to the job site, the truck that claimant was driving was broadsided by a car that ran a stop sign. Claimant does not remember the accident. His memory resumes the morning following the accident when he found himself in the hospital with serious injuries. Claimant, however, recalls passing the convenience store where he was permitted to use the bathroom facilities. That is confirmed by the sheriff's accident report, which indicates the accident occurred at the intersection of 55th Street South and Oliver in Sedgwick County, Kansas, which places the accident between the convenience store and the job site.

Restroom breaks are incidental to employment. Therefore, accidents that occur during such activity may be compensable under the Workers Compensation Act. The Board concludes that although claimant may have deviated from his employment by driving to his girlfriend's residence to use the restroom rather than use the facilities of the nearest convenience store, such departure had terminated and claimant was back on route to the job site when the accident occurred.¹ Accordingly, this accident is compensable under the Workers Compensation Act.

¹ See *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

WHEREFORE, the Board reverses the August 27, 2002 preliminary hearing Order and finds that claimant's June 25, 2002 accident arose out of and in the course of employment with respondent. The Board remands this claim to the Judge to address claimant's request for benefits in light of this finding. The Board does not retain jurisdiction of this claim.

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

c: Michelle L. Brenwald, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation